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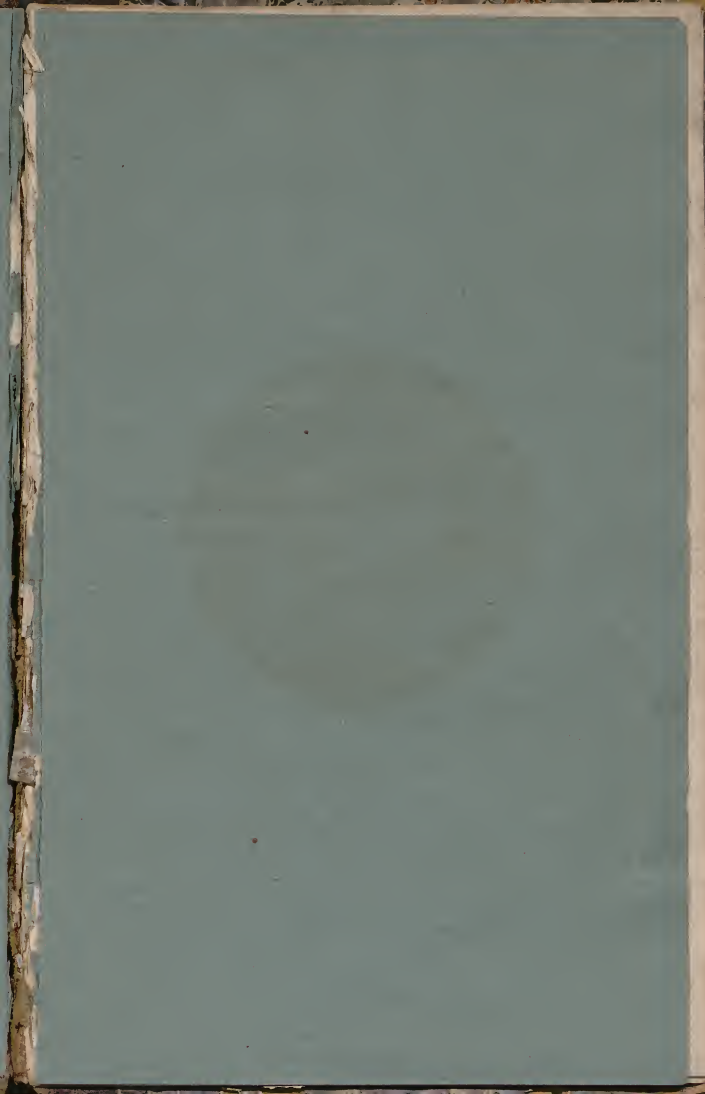
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A LETTER

TO

SIR JAMES ALLAN PARK, KNT.

ONE OF

HIS MAJESTY'S JUSTICES

OF THE

Court of Common Pleas,

ON

HIS CONDUCT

AT THE

SUMMER ASSIZES FOR THE COUNTY OF DEVON,

In the Year 1816.

Russell, pseud

SUUM CUIQUE.

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IMPRESSED with every respect for the Author of the following Letter, the Editor considers it his duty to state, that it appeared in the Exeter Alfred of the time in which the circumstances alluded to took place; and that no motives, but the ability displayed by the Author, and a prevailing wish to expose injustice under whatever shape it may appear, have induced the Editor to bring it once more to light. The Author is entirely unknown to any one connected with this publication; the facts mentioned must therefore be ushered into the world without any document to vouch for their authenticity; except, the idea which any professional or other person, who has seen the subject of the Letter presiding on the Bench, may entertain of his conduct; and, accordingly, consider the circumstances mentioned to be true, in substance, and matter of fact.

185763

To Sir JAMES ALLAN PARK, Knt.

ONE OF HIS MAJESTY'S JUSTICES OF THE COURT OF
COMMON PLEAS.

MY LORD,

EDUCATION in my earlier years, and reason and reflection at a maturer age, have taught me to venerate the laws of my country, and no man shall surpass me in a rational attachment to its constitutional authorities. Think not, my Lord, that this address to you is dictated by personal pique, prejudice, or passion; it is the respectful but firm remonstrance of one, who feels it to be a duty that he owes to his country, not to see the first principles of that jurisprudence, which has formed the character of Englishmen, and secured to them their civil, political, and religious rights, violated with impunity.

Possessed of a Constitution, that not only recognizes, but most minutely measures the relative rights of peasant, peer, and prince, we have much to boast of: it was obtained for us by the blood of our forefathers, and is endeared to us by the blessings which it confers. In gratitude to them, in justice to ourselves and to posterity,

we ought to *repair* rather than *destroy* its wasting land-marks, to protect its free and sacred principles from perversion and pollution, and its noble and venerable institutions from violation and invasion.

Although I now, my Lord, from a deep sense of public duty, through the medium of a free press, the vital spark of our Constitution, comment on your conduct as a Judge, still I feel bound, by every tie, to do justice to your private character as a man:—were that in question, I should be found amongst your warmest advocates, and not your loudest accuser. In private society you are courteous, affable, benevolent, humane, loyal, and pious; but on the bench, impatient, petulant, and precipitate; anticipating the merits of a cause, as if gifted with the attributes of the Deity; informing all around you of your premature judgment, either in the language of a man impatient of controul, or by gestures unequivocally indicative of displeasure. Were you endowed with divine intelligence, with the penetration of the Eternal, such conduct would still be incorrect. An angry and irritable judge ill accords with a system, the chief merits of which consist in patient investigation, minute enquiry, and equal justice.

Your conduct at the late assizes for the county

of Devon has created universal disgust and dissatisfaction: the general language is, "*The causes were not judged, but prejudged.*" This is not the querulous wailing of disappointed suitors:—even those who *profited* by your errors are the foremost in your condemnation. Business led me to the assizes; and, having much leisure, I attended most closely to the proceedings of the Court of Nisi Prius; and, in my humble opinion, the whole tenor of your Lordship's conduct shewed that *dispatch* was the order of the day. In the cause of *Doe*, on the demise of *Savery*, against *Edmonds*, on the second witness being called for the defendant, your Lordship said, "Brother Pell, I do not mean to prescribe to you how you should conduct your cause, for, after the evidence of Drs. Remmett and Woollcombe"—"I have almost thirty witnesses," said the learned Sergeant.—"I shall tell the jury," says your Lordship—"If your Lordship tells me, that, if I call *thirty* witnesses, you'll tell the jury not to *believe* them, I have done," replies the Sergeant. I have no doubt that this acute lawyer exercised his wonted discretion in calling the witnesses he did; but you, my Lord, in spite of his disclaimer, did actually prescribe to him another course, and he, rather than draw down upon his client your resentment, adopted it.

Here I cannot pass unnoticed the marked contrast in the treatment of the honest yeomanry and peasantry examined at the bar; and these medical gentlemen: it appeared as if your Lordship, and the Counsel, who cross-examined the first of them, were contending which could flatter him the most. Was all this meant in compliment to the worthy Doctor, my Lord, or to his learned and deservedly exalted relative? It was a disgraceful exhibition in a court of justice;—to every honourable and ingenuous mind, it must have been disgustingly fulsome;—to other witnesses, possessing the common feelings of men, pointedly insulting. These gentlemen are, in private life, respectable; in their profession, eminent; and required not such an invidious, partial, disgraceful, and degrading tribute to their merit. In the eye of justice, all men have an equal right to civility and courtesy; and your Lordship, and the learned Counsel, should never forget that poverty is not a crime, by which that right can be forfeited.

In *Jewell* against *Smith*, your Lordship loudly proclaimed your opinion, immediately on seeing a plan of the premises, even before it was opened to the Jury; and, on the examination of the second witness for the plaintiff, called on the defendant's Counsel, and asked them if they could answer the plaintiff's witnesses, again exclaiming,

"*I shall tell the Jury.*" Sitting very close to the defendant's Counsel and Solicitor, I heard all that passed :—" *We can contradict the whole : shall we "not be heard!"* said the Solicitor. "*What can "we do?"*" said the Counsel : "*You see the Judge "is against you."*" You then said, "If you go on, I shall tell the Jury to consider it as a question for damages, on account of the violence;" and this, my Lord, after the plaintiff's witness had twice, on oath, negatived all violence, and his Counsel had stated the question as purely a question of right.

Look at your notes, my Lord!—"Shall we "not be heard?" said the Solicitor, who I know ranks high in the profession. This was a very natural question ; *audi alteram partem* is the first principle of natural justice ; it is a fundamental maxim in our law. By what law in the constitution, by what language in your commission, are you, my Lord, authorised as Judge to refuse to hear a host of witnesses collected at vast trouble and expense, and to dictate to a Jury the verdict they are to return, after debarring them from hearing that evidence, according to which they have been sworn to decide? A Jury was sworn to give a verdict according to the evidence, that is, I believe, according to the evidence that each party might choose to adduce, and not according to

as much of it as your Lordship, in your pleasure and importance, might think fit to hear. On other occasions, you are pathetically eloquent on the solemn and obligatory nature of an oath, but that is, forsooth, when it is administered to a *witness*. What becomes of the solemnity of the obligatory force of an oath when administered to a Jury, when you stop a cause before even the plaintiff has finished his case, although the defendant has a host of witnesses to contradict him; and tell or direct (I use your own words) the jury (poor passive souls!) that they must, in spite of their oath, find a verdict for the plaintiff? "*What can we do?*" said the Counsel; "*you see the Judge is against you.*"

To what a dilemma are the Counsel reduced! they must either quarrel with the Judge, or abandon their duty to their client. The learned gentlemen are generally thought too obsequious to the bench. In the cause to which I advert, they certainly ought to have respectfully requested your Lordship to hear the defendant's witnesses, and, on your refusal, to have insisted on and claimed it as a *right* not to be restricted, limited, qualified, or controuled, by any power known to the constitution, not even by the legislature itself, for that (according to Junius) is limited not only by the general rules of natural justice, by

the welfare of the community, but by the forms and principles of our particular constitution. A special juror wished to ask a witness a question before the Counsel had finished the examination ; your Lordship would not permit him, on the pretence that it was contrary to practice. You must know, my Lord, and the jurors ought to know, that *they*, and *they* alone, are the real judges in every question of fact, and that it is not only their *right*, but likewise their duty, to ask, in every stage of the trial, such questions as they may conceive necessary to inform their consciences, subject only to your Lordship's correction in points of *law*. They have not the means afforded them of taking down the evidence, as your Lordship has : the question may occur to them in one moment, escape them in the next ; it is, therefore, essential to the ends of justice that it should be asked *immediately*. It is of the utmost importance, my Lord, that they should be taught their rights and their duties : if, knowing them, they have not sufficient spirit to protect the one, and integrity to perform the other, they ought to be disgraced in the eyes of their injured country !

It has been the practice of your Lordship's predecessors to leave the conduct of causes to the advocates ; but if they, in their wisdom, saw oc-

casion for compromise or reference, they delicately, and from the best and purest motives, hinted their opinion, but never enforced it by angry gestures or intemperate language. It is the right of the advocate, my Lord, to conduct his cause as his judgment dictates, if he infringe no established practice, nor violate any rule of law. The character of the Advocates on the Western Circuit, my Lord, one might have supposed, would be a pledge that such a right would not have been abused. Its leaders are men of admitted talents: the one, not surpassed in legal acuteness, or in ardent but discreet zeal for the interests of his clients; the other can never be forgotten while knowledge, integrity, and honour, are esteemed amongst men;—to him we may point as the model for the rising Advocates of this and all future times. Called from amongst them when he may be, either by the honours that await him, or to pay that debt which we must all one day discharge, he will have taught them this important truth,—that their duties, under all circumstances, are compatible with that civility, courtesy, and humanity, which are due from man to man, however unequal their station in society; and that they are perfectly consistent with as high, as fine, and as nice a sense of honour, as e'er adorned a person or dignified a people.

By what authority, my Lord, did you examine at the bar of your court a respectable man as to his religious creed? You asked him if he had ever taken the sacrament, he hesitated to answer. You repeated your question, he then said he had taken bread and wine. His competency as a witness was not in question; it had not the most remote reference to the cause in which he was examined: he came not there to be exposed to those who might differ from him in their religious tenets. Ask your own heart, my Lord, it will tell you that a man's religion, if it be pure, is a question solely between his conscience and his God; and that it is the duty of a judge to dispel prevailing prejudices, whether political or religious, and not to inflame them. Is it true, my Lord, that, on a Quaker presenting to you a memorial on the behalf of an unfortunate man now no more, you flew into a passion, and said that no one but a *Quaker* could be capable of such an improper interference? If it be, what a homage to their virtues! Yes, my Lord, it is a truth not very grateful to us who are of a different persuasion, that, in the cause of humanity, they are ever found the most disinterested, ardent, and persevering.

A very respectable Solicitor, suggesting, in an under-tone, what he doubtless conceived im-

portant in the cause, received this undignified and unjust rebuke:—"Hold your tongue, Sir; let your Counsel alone, they can do better without you." As he thought it important, it was, in my humble opinion, his duty to suggest it; but admitting, for a moment, that it was an error, it was sanctified by its cause; it was on the side of duty:—I would to God, my Lord, that such were your's.

Where, again, was the dignity of the Judge, when the mere creaking of a door could rouse your anger to such a pitch, as to induce you furiously to rise from your seat, and exclaim, "Javelin-man! I say, Javelin-man! oil that door at my expense." While you were repeating your dignified commands, the trembling man opened the door, and said, "*My Lord Judge, I am about it.*" Curiosity is certainly not confined to the fair sex; I confess mine is very great to know how this farce ended. Did your Lordship actually pay the penny? When you enter the county of Devon to administer justice, you have a right, my Lord, to expect that the doors of the Court be well oiled, that they cause you no interruption. That County, which cheerfully pays its share towards furnishing your Lordship with corn, wine, and oil, has a right to expect that you will not suffer the doors of the Consti-

tution to creak on their hinges : England expects every man to do his duty, whether Prince, Peer, Prelate, or Peasant.

I will now call your Lordship's attention to a work, which, if generally read, cannot fail to become of great public utility, as it breathes throughout the genuine principles of civil, political, and religious liberty, and inculcates the purest precepts of public and private duty : it is an *Enquiry into the Duties of Men*, by Thomas Gisborne. In treating of the peculiar duties of Judges, he says, " Patient and uniform attention, " during the progress of a trial, should mark the " conduct of an upright Judge. His duty is to " imprint on his memory every leading fact and " important circumstance on either side of the " question ; to listen without bias to the con- " tending Counsel ; and impartially to examine " the adverse witnesses. He will not attempt to " shew his sagacity by ostentatiously anticipating " what he might shortly have heard from the bar " nor gratify his vanity, or indulge his weariness " by needlessly interrupting the pleaders and witnesses, and preventing pertinent interrogatories and replies. While he unites in his own demeanour affable condescension with sober gravity, he will check in the advocates all unbecoming artifices, all brow-beating, all attempts

" to confound and embarrass the witnesses, all
 " intemperate heat, all personal asperity, and,
 " more especially, every approach to virulence and
 " slander; and will not be led, by mistaken deli-
 " cacy towards the Counsel, to content himself
 " with listening with silent dislike, but will stand
 " forward, with active and pointed interposition,
 " to check any part of their behaviour which de-
 " serves reprehension. He will shew, by his fair-
 " ness and candour, that he has not imbibed any
 " of the prejudices which may be prevalent in the
 " country respecting the cause or the parties at
 " issue; he will reverence the institution of Juries,
 " as the safeguard of English liberty; and will
 " not seek to encroach on their legal power, nor
 " endeavour, by resorting to fictitious or refined
 " distinctions between the fact and the law, to
 " withdraw any part of the question from their
 " jurisdiction into his own; he will state to them
 " the sum of the evidence on each side of the
 " question in perspicuous order, and with perfect
 " impartiality; recapitulating, selecting, and col-
 " lating the material points, and carefully remark-
 " ing the circumstances which tend to confirm or
 " impair the credit of suspicious witnesses. What-
 " ever be the nature of the case, he will never
 " suffer himself to be induced by *fatigue* or by
 " *pressure of business*, or by the importunity of

“others, to pronounce a final decision which has
 “not been previously matured by sufficient de-
 “liberation. Let him guard against a failure far
 “more likely to be displayed than want of inte-
 “grity,—the want of *adequate deliberation*.”

In his remarks on the first principles of the
 British Constitution, he says, “in the administra-
 “tion of justice, the first requisite is, that it be
 “impartial; that the courts of justice of Great
 “Britain are equally open to the poor and the
 “rich, to the subject and to the monarch; and
 “that, in general, the decisions are formed and
 “the laws administered with as great a degree of
 “uprightness and wisdom as it is possible to ex-
 “pect in a human tribunal, are truths universally
 “acknowledged. The appointment of Judges of
 “the supreme courts, rewarded with ample sala-
 “ries, and removeable from their office only on
 “the concurrent application of both Houses of
 “Parliament; the admirable institution of Juries;
 “and the permission of new trials, in a variety of
 “cases; are among the precautions by which the
 “Constitution has wisely endeavoured to secure
 “this momentous object. Yet all its precautions
 “might have been found ineffectual, had it not
 “been for that publicity in judicial proceedings
 “which is established in this country; a publicity

“ which renders the conduct of each Judge, dur-
 “ ing the whole course of a trial, as well as his
 “ final decision, known not only to the parties
 “ concerned, and their agents, but to all persons
 “ whatever who have the curiosity to be present ;
 “ and to the members of the legal profession who
 “ crowd round the tribunal, anxious to mark his
 “ behaviour and determination, and too discerning
 “ not to discover any material impropriety in either.
 “ This publicity is, in effect, rendered universal
 “ by means of the press, which, in all cases of
 “ importance, conveys a detailed account of ju-
 “ dicial transactions to every quarter of the king-
 “ dom. *That Government which dares not allow*
 “ *its own laws and proceedings, and the conduct of*
 “ *the Courts, to be fairly discussed by the public,*
 “ *betrays its weakness or its guilt !”*

It is in our Courts of Law, my Lord, that the
 finest lessons of loyalty are learned ; there the
 people look to the Judge for an example of all that
 is dignified in demeanour, and deliberate and so-
 lemn in judgment. To elevate to the judgment-
 seat men not endowed with that *cool discretion*,
 that *degree of patience*, which are essential to the
 proper discharge of so important a trust, is to at-
 tack the very vitals of our Constitution : it is
 there the people appeal for decisions in their dis-

putes ; they receive them with reverence, and obey them with implicit submission : hence the animosities of contending parties are allayed, and they return again to society, good friends, and peaceful neighbours. Not so, my Lord, if either party is unheard : refuse them that right, you inflame their minds, alienate their affections from the Government, and break the great bond of society, the chain on which depends the harmony of the whole.

You must, my Lord, have forgotten that you represented the Sovereign of this realm ; that the allegiance of the subject is the child of justice ; that, by standing between the people and that fair and open trial by jury which they have been induced to look for, you were depriving them of their dearest right, a right of which, in later times, the Judges of the land have generally been, and I hope ever will be, the most strenuous assertors. One of the first acts of the reign of our once most gracious, now unhappily afflicted, Monarch, was to render the Judges independent of the Crown, his Majesty having been pleased to declare, " That he looked upon the independence and uprightness of the Judges as essential to the impartial administration of justice, as *one of the best securities of the rights and liberties of his subjects*, and as the most conducive to the honour of the Crown."

What is it, my Lord, that has formed the character of Englishmen to all that is open, manly, generous, and brave? What is it that has imbued them with that high and untameable spirit, that they prefer death rather than yield to even the semblance of injustice and oppression? What is it that has inspired them with that self-devotion to their country, that, in Waterloo's well-fought field, made every Briton a Leonidas? It is that free spirit which pervades their matchless Constitution, the Liberty of the Press, the ready access to the Courts of Law, and the conviction that there they will find justice; close them, my Lord, and you will see that it is not the climate that makes bravos and assassins: the human mind, in no clime, can rest under the goading sense of rights withheld or injuries unredressed. In this enlightened age it is difficult to conceive that Englishmen can be so debased as to suffer themselves to be deprived of their dearest right, *their right to equal justice*; but if such must be their fate, it is of little, very little, import whether it be effected by the supineness of juries, *the servility of the bar*, or the undue or unconstitutional influence of the Judge: they are alike subdued and enslaved, whether it be the effect of inadvertence or design, ignorance or treason.

If your Lordship have been led into these errors

by the wish to have the pride of saying, that you *finished* the business of the county, great as it was, let me, in the name of my country, implore you never to repeat them : it is a pride false in principle, and, if persisted in, may be fatal in effect. Know, my Lord, that of all intentional ill my heart most fully acquits you ; from such a suspicion your private virtues protect you. Were I insensible to or incapable of appreciating them, well, indeed, might you despise me. If you are ambitious, that, when your earthly career be closed, your name should appear in that bright constellation of British Judges, the upright and dignified administrators of our laws, the firm and determined defenders of their country's rights, you will remember and respect the voice of him who is no factious demagogue, that would fain, under the assumed mask of patriotism and a love of justice, wantonly and wickedly loosen the bonds of society, by degrading, in the public eye, the Judges of the land : No, my Lord ; they possess my love, my veneration, not because they are Judges, but because they religiously perform the duties of that high office. In these awful and tremendous times, they must not sink in their Country's estimation. Around the altar of justice every friend to social order should rally :

while that is preserved pure and unpolluted, whatever convulsions, political or religious, we may be doomed to undergo, we still shall keep our rank in the scale of nations: let that sacred altar be attacked, there shall not be found wanting in its defence the hand, heart, and blood, of

RUSSELL.

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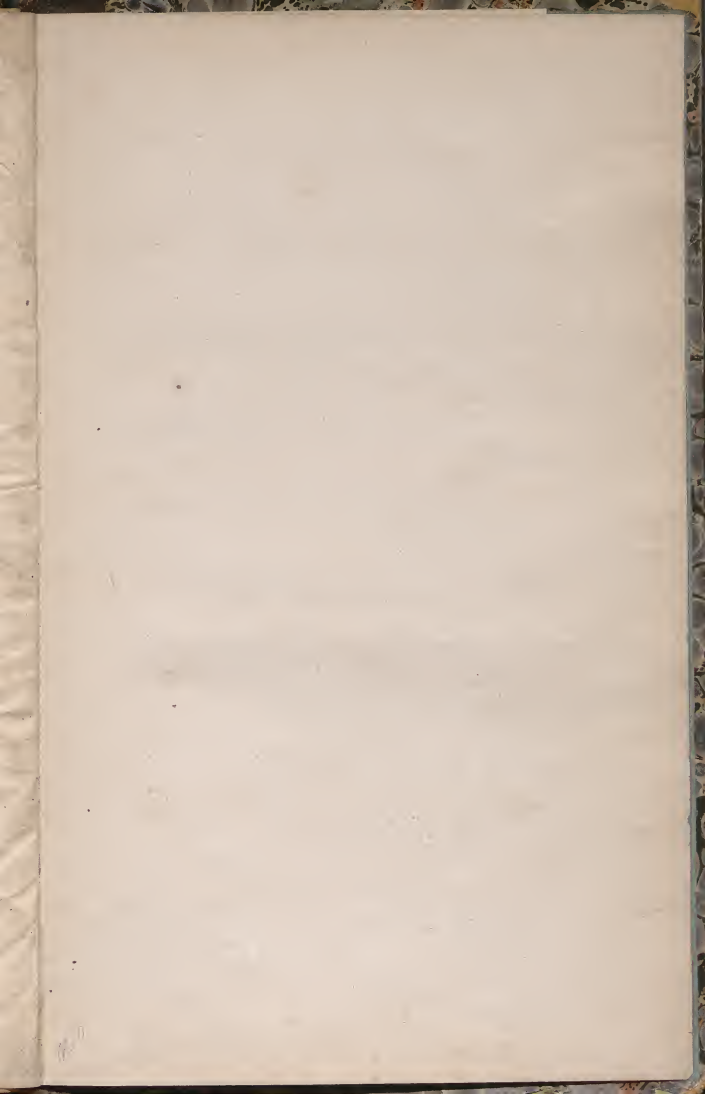
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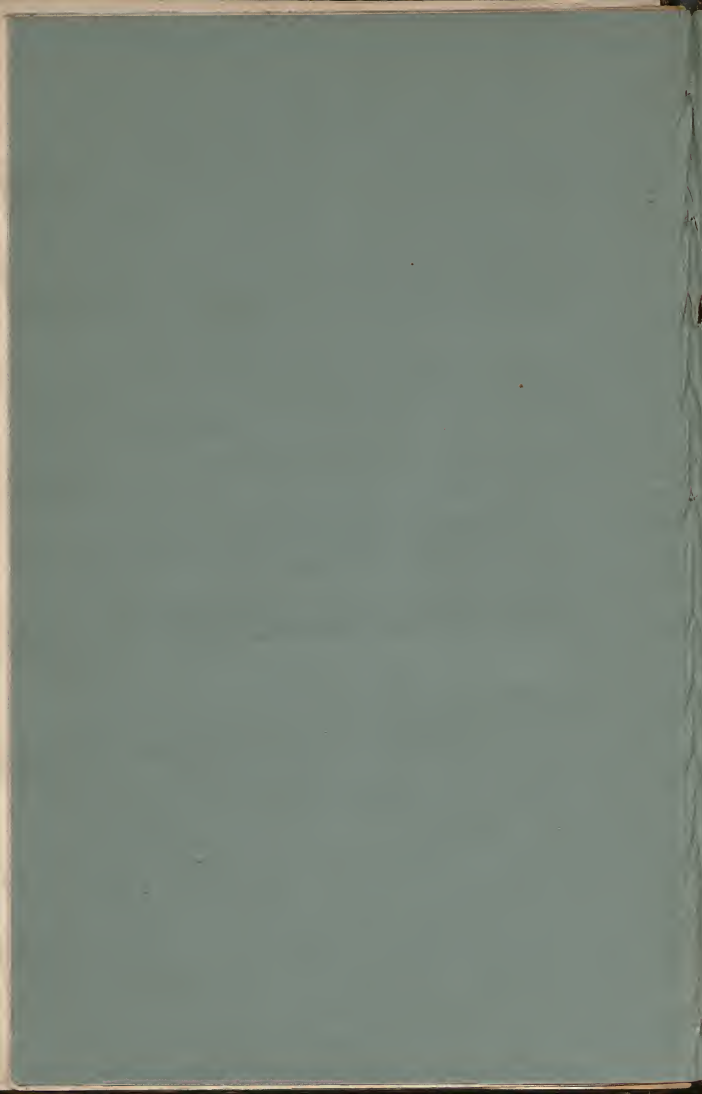
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Letter to Sir James Allan Park

